

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Nathaniel Livingston, Jr.,
Plaintiff

vs

Case No. C-1-02-102
(Hogan, M. J.)

Charles Luken, et. al.,
Defendants

ORDER

This matter is before the court on plaintiff Nathaniel Livingston's motion to dismiss defendants Alicia Reece and Charles Luken pursuant to Fed. R. Civ. P. 41(a)(2). Doc 55. The motion, which was filed on July 3, 2003, is unopposed. The parties have consented to the entry of final judgment in this matter by the undersigned United States Magistrate Judge. (Doc. 38).

Fed. R. Civ. P. 41 provides in pertinent part:

(a) VOLUNTARY DISMISSAL . . .(2) *By Order of Court.*

Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Plaintiff seeks dismissal of the individual defendants Reece and Luken without prejudice, such that the City of Cincinnati would be the only remaining defendant in this action. Defendants do not object. The motion is hereby GRANTED and defendants Reece and Luken are dismissed without prejudice.

s/Timothy S. Hogan

Timothy S. Hogan

United States Magistrate Judge

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lww/TSH
September 3, 2003